
IN THE HOUSE OF REPRESENTATIVES.

FEBRUARY 13, 1871.

Read twice, referred to the Committee on Railways and Canals, and ordered to be printed.

Mr. STEVENSON, on leave, introduced the following bill:

A BILL

To promote the construction of the Cincinnati and Southern Railway.

Whereas it is represented to this present Congress that Miles Greenwood, Richard M. Bishop, William Hooper, Philip Heidelberg, and Edward A. Ferguson, of the city of Cincinnati, in the State of Ohio, were appointed, under and by virtue of an act of the general assembly of the said State of Ohio, passed on the fourth day of May, in the year eighteen hundred and sixty-nine, a board of trustees, with authority, by the name of the Trustees of the Cincinnati Southern Railway, to borrow a fund not to exceed ten million dollars, and to issue bonds therefor in the name of the said city of Cincinnati, under the corporate seal thereof, of which said fund the said Miles Greenwood, Richard M. Bishop, William Hooper, Philip Heidelberg, and Edward A. Ferguson, and their successors, are to be trustees, with power to expend the same in procuring the right to construct and in constructing a single or double track railway, with all the usual appendages, including a line of telegraph, between the said city of Cincin

mati and the city of Chattanooga, in the State of Tennessee, to be called and known as the Cincinnati Southern Railway, and with power and capacity for the purpose as aforesaid, to make contracts, appoint, employ, and pay officers and agents, and to acquire, hold, and possess all the necessary real and personal property and franchises, in the said State of Ohio, or in any other State into which the said line of railway may extend, and with other powers in said act expressed: Therefore,

1 *Be it enacted by the Senate and House of Representa-*
 2 *tives of the United States of America in Congress assembled,*
 3 That the said board of trustees, namely, Miles Greenwood,
 4 Richard M. Bishop, William Hooper, Philip Heidelbach, and
 5 Edward A. Ferguson, and their successors, by the name of the
 6 Trustees of the Cincinnati Southern Railway, be, and they are
 7 hereby, authorized, subject to the provisions and restrictions
 8 in the act provided to construct and maintain the said line of
 9 railway with a single or double track, with all the usual
 10 appendages, including a line of telegraph, and the bridges
 11 necessary to carry said railway across the navigable rivers
 12 intervening between the termini thereof, and to exercise the
 13 powers vested in them by said act of the general assembly of
 14 Ohio in leasing the same.

1 SEC. 2. *And be it further enacted,* That before any bridge
 2 shall be commenced under this act, the said trustees shall sub
 3 mit to the Secretary of War a plan of the bridge and piers,
 4 with a detailed map of the river, at the proposed site of the

5 bridge, together with all other information touching such
 6 bridge and river as may be deemed requisite by the Secretary
 7 of War: *Provided*, That the bridge across the Ohio River
 8 shall have an unbroken or continuous span across the main
 9 low-water channel of an elevation not less than ninety feet
 10 above low-water mark, nor less than forty feet above extreme
 11 high-water mark, as understood at the point of location
 12 measuring, for such elevation, to the bottom chord of the
 13 bridge; and all the spans, other than the one over the main
 14 low-water channel, shall be at least two hundred and fifty
 15 feet in length in the clear, and the span covering the main
 16 low-water channel shall be of such length as to leave at least
 17 four hundred feet for unobstructed passage-way for navigation
 18 at all stages: *Provided further*, That before the Secretary of
 19 War shall grant permission to said trustees to construct a
 20 bridge across the said river Ohio, he shall detail a board, to
 21 be composed of three experienced officers of the Corps of
 22 Engineers, to examine the proposed location of said bridge,
 23 and report what length of span, and other conditions, they
 24 deem necessary to secure a passage-way that shall not unneces-
 25 sarily obstruct the navigation of the said river.

1 SEC. 3. *And be it further enacted*, That the Secretary
 2 of War is hereby authorized and directed, upon receiving
 3 said plans, maps, reports, and other information, and being
 4 satisfied that a bridge can be built at either of the proposed

5 localities, which will not unnecessarily obstruct or injuriously
 6 modify navigation, to notify in writing the said trustees that
 7 he approves the plan and location of the same, and upon
 8 receiving such notification the said trustees may proceed to
 9 the erection of such bridge, conforming strictly to the ap-
 10 proved plan and location.

1 SEC. 4. *And be it further enacted,* That in case of any
 2 litigation arising from any obstruction or alleged obstruction
 3 to navigation created by the construction of any bridge under
 4 this act, the cause or question arising may be tried before the
 5 district court of the United States of any State in which any
 6 portion of said obstruction or bridge touches.

1 SEC. 5. *And be it further enacted,* That said trustees
 2 are hereby empowered to purchase, lease, receive, and hold
 3 such lands or other property as may be necessary for accom-
 4 plishing the objects of this act, and may, by their agents
 5 engineers, contractors, or workmen, immediately enter upon,
 6 take possession of, and use all such lands and property
 7 as may be necessary for the construction, maintenance
 8 and operation of said railway, and the accommodations
 9 requisite and appertaining thereto; but all lands or property
 10 thus entered upon and appropriated by said trustees, which
 11 are not donations, shall be purchased by said trustees of
 12 the owner or owners of the same, at a price to be
 13 mutually agreed upon between them. And in case of a dis-

14 agreement as to price, and before taking exclusive possession
15 of the track of said railway and its appurtenances, the said
16 trustees, or the owner or owners of such lands or property,
17 shall apply by petition to the justice or justices of the Su-
18 preme, circuit, or district court of the United States having
19 jurisdiction in the State or locality in which said lands or
20 other property may be situated, particularly describing the
21 same; and the said justice, upon receiving such application,
22 shall cause such notice to be given to the other party as he
23 shall deem proper and sufficient, appointing therein a time
24 and place of hearing the parties, at which time and place, upon
25 proof that the notice directed has been given, the said justice
26 shall direct the manner of ascertaining the true value of said
27 lands or other property, together with the damages which the
28 owner or owners thereof have sustained or may sustain by
29 reason of the appropriation, occupation, and use thereof by the
30 said trustees. And the said justice shall appoint not less than
31 three nor more than seven competent and disinterested com-
32 missioners, who shall be freeholders in the State or district,
33 and at least one of whom shall be a resident of the county
34 in which said lands or other property may be situated, and
35 who shall, under the direction of the said justice, view said
36 premises or property, take such testimony as they may deem
37 proper, make appraisement, and determine the said damages,
38 and report the same, under oath and in writing, to the said

39 justice. The report shall contain a minute and accurate de-
40 scription of the lands and other property appraised, together
41 with all the evidence taken by the commissioners in the
42 case. It shall be the duty of the said justice to examine the
43 report of the said commissioners, and, upon the application of
44 either party, he shall give the party a hearing in relation
45 thereto; and he shall, unless a jury be demanded, have power
46 to increase or diminish said appraisal or damages, if he shall
47 become satisfied upon such hearing that injustice has been
48 done. But either party may have a jury to determine the
49 amount of damages; and in case such jury be demanded, the
50 case shall be tried at the next term of the circuit court of the
51 United States, under such rules as the court shall provide.
52 Upon proof to the said justice, to be made within sixty days
53 after his determination of payment to the owner, or of depos-
54 iting to the credit of the owner, or his legal representative,
55 in such incorporated moneyed institution as the said justice
56 shall direct, the amount of said award, and the payment of
57 all expenses attending the same, including an allowance of
58 five dollars per diem to each of the aforesaid commissioners,
59 the said justice shall make an order or decree, particularly
60 describing said lands and other property, and reciting the
61 appraisement of damages, and the mode of making it,
62 together with such other facts as he may deem pertinent;
63 and when the said order or decree shall be recorded in the

64 clerk's office of the county, town, or city in which such lands
65 or other property may be situated, and also in the office
66 of the Secretary of the Interior, the said trustees, their suc-
67 cessors and assigns, shall be legally and equitably seized and
68 possessed of such lands and other property for the purpose
69 hereinbefore described. In case any married woman, infant,
70 idiot, insane person, or non-resident of the State or district in
71 which said lands or other property may be situated, shall be
72 interested in such lands or other property, the said justice
73 shall appoint some competent disinterested person to appear
74 before said commissioners, and act for and in behalf of such
75 married woman, idiot, infant, insane person, or non-resident;
76 *Provided, however,* That the said trustees shall not have
77 power to condemn the property of any railway company
78 chartered by the laws of any State, except so far as the same
79 may be necessary for crossing the line of such railroad, doing
80 no unnecessary damage thereto.

1 SEC. 6. *And be it further enacted,* That if during the
2 construction, or after the completion of said line of railway, it
3 shall be found necessary by said trustees to change the location
4 or grade, or to substitute other works or conveniences for those
5 originally designed or constructed, or to provide additional
6 side-tracks, or other appendages, for the proper management
7 and operation of said railway, the said trustees may make
8 such changes, and provide such additional appendages, not

9 departing from the general route originally selected by them,
10 and for the purpose aforesaid may acquire or enter upon, take,
11 and appropriate such lands or other property as may be
12 necessary in the mode hereinbefore prescribed.

1 SEC. 7. *And be it further enacted,* That the gauge of the
2 said railway shall be of uniform width or so as to carry one
3 set of cars throughout its entire length, and the entire railway
4 shall, with its outfit, fixtures, and structures, together with all its
5 appurtenances, be equal in character and workmanship to any
6 of the first-class railways of the United States.

1 SEC. 8. *And be it further enacted,* That said trustees
2 shall survey and locate the route of said line of railway, and
3 actually commence the construction thereof, within one year
4 from the passage of this act, and shall continue such con-
5 struction, and complete the work within five years therefrom,
6 or within such further reasonable period as the Secretary of
7 the Interior may grant, upon satisfactory evidence that they
8 are progressing with due diligence and in good faith. A map
9 and profile of said railway, and any alteration or addition
10 herein authorized, shall be deposited with the Secretary of the
11 Interior within such time as he may prescribe.

1 SEC. 9. *And be it further enacted,* That the respective
2 holders of all the bonds issued by said trustees under said act
3 of the general assembly of Ohio are hereby declared to be
4 entitled to hold, by way of mortgage, without any conveyance,

5 the said line of railway and its appendages, and the net
 6 income thereof, and all the estate, right, title and interest
 7 of the said city of Cincinnati, and of the said board of trus-
 8 tees therein, until the respective sums mentioned in said
 9 bonds, and the interest thereon, shall be fully paid, without
 10 any preference one above another by reason of priority of
 11 date of any such bonds, or of the time when such holder
 12 became the owner of the same, or otherwise howsoever.
 13 The mortgage lien hereby given is to vest as soon as rights
 14 of way or lands whereon are to be placed the works and
 15 conveniences used in constructing, maintaining, or operating
 16 said railway are acquired or taken by virtue of the powers of
 17 the said trustees: *Provided*, That nothing herein contained
 18 shall affect the lien of any prior owner upon land sold to or
 19 appropriated by said trustees, nor to be held to include the
 20 rolling-stock used in operating said road.

1 SEC. 10. *And be it further enacted*, That if any suit or
 2 proceeding, either in law or equity, or any criminal prosecu-
 3 tion, shall be commenced in any State court against the said
 4 trustees, their successors or assigns, or any person authorized
 5 or employed by them, for any act done or omitted to be done
 6 in and about the construction of the railway hereby author-
 7 ized under and by virtue of this act, and in which the valid-
 8 ity of any franchise conferred by this act is denied, or to
 9 restrain by injunction or otherwise the construction, com-

10 pletion, or operation of the said railway, and the defendant
11 shall, at the time of entering his appearance, or within thirty
12 days thereafter, in such court, in said action or proceeding,
13 file a petition stating the facts, and verified by affidavits,
14 for a removal of the cause, for the trial at the next cir-
15 cuit court of the United States to be holden in the district
16 where such suit or prosecution is pending, and offer good
17 and sufficient security for his filing in such circuit court,
18 on the first day of its next session, copies of the process
19 and other proceedings against him in such State court,
20 and also for his appearing in such circuit court, and enter-
21 ing special bail in the cause of proceeding, (if special
22 bail was originally required therein,) it then shall be the duty
23 of the State court to accept the security, and proceed no fur-
24 ther in the cause or prosecution, and the bail that shall have
25 been originally taken in such State court shall be discharged
26 And upon such copies being filed as aforesaid in such circuit
27 court of the United States, the cause or prosecution shall pro-
28 ceed therein, in the same manner as if it had been brought in
29 such circuit court, whatever may be the amount in dispute,
30 or the damage claimed, or whatever may be the citizenship
31 of the parties, any law to the contrary notwithstanding.
32 And any attachment of the goods or the estate of the defend-
33 ant by original process from such State court shall hold the
34 goods and the estate so attached to answer the final judgment

35 in the same manner as by the laws of such State they would
36 have been holden to answer final judgment had it been ren-
37 dered in the court in which the suit or prosecution was com-
38 menced; and from any final judgment rendered in any such
39 suit or prosecution by such circuit courts, a writ of error
40 shall lie to the Supreme Court of the United States, whatever
41 may be the amount of such judgment, any law to the con-
42 trary notwithstanding.

1 SEC. 11. *And be it further enacted,* That the said
2 line of railway, with the bridges hereby authorized to be con-
3 structed, shall be deemed and considered a national public
4 highway and post road, for the transmission of the mails and
5 the troops and munitions of war of the United States; and no
6 tax or transit duty shall be imposed by virtue of any State
7 authority upon the traffic of said company, its freight or pas-
8 sengers, and no property tax shall be levied on the property
9 of said road at a higher rate pro rata than is levied by the
10 laws of said State upon the property of all other roads con-
11 structed in said State under the laws thereof.

1 SEC. 12. *And be it further enacted,* That the charge for
2 transportation on said railway shall not exceed thirty-five
3 cents per hundred pounds on heavy articles, and ten cents per
4 cubic foot on articles of measurement for every hundred miles,
5 and five cents a mile for every passenger.

1 SEC. 13. *And be it further enacted,* That the lines of

2 railroads carrying mails of the United States which may be,
3 or are now, constructed under the authority of the States
4 through which the railway hereby authorized shall pass, and
5 which may meet or intersect the same, and their connections,
6 shall have the right to connect for the purpose of transpor-
7 tation with the railway hereby authorized on fair and equita-
8 ble terms, under the pro rata system now customary upon
9 main lines in the United States: *Provided*, That the
10 lines of railroad so claiming the right to connect shall
11 reciprocate in traffic with the line hereby authorized upon the
12 same terms and without discrimination or prejudice against it;
13 such connecting lines shall have the right to sell through
14 tickets, check through baggage, and transport freight in such
15 manner and upon such terms as are customary between con-
16 necting lines of railways, and through tickets, through bag-
17 gage, through receipts for freight, shall be furnished by the
18 persons or company operating the line hereby authorized over
19 such lines of railroad as may connect with them, and as the
20 passenger and shipper or consignor may select, and without
21 discrimination or prejudice to any one or more of said con-
22 necting lines of railroad.

1 SEC. 14. *And be it further enacted*, That the persons or
2 company operating said railway, or any part thereof, as lessees
3 or otherwise, shall receive and carry all passengers and freight
4 coming or brought to it or them to be carried, and shall

5 keep an agent in every county through which the said railway
6 runs, upon whom service of process may be made.

1 SEC. 15. *And be it further enacted*, That the said trustees
2 shall keep an office and an agent in the city of Covington,
3 Kentucky, and in the city of Chattanooga, Tennessee, upon
4 whom service of process may be made. They may sue and
5 be sued in the courts of the United States by the name of the
6 Trustees of the Cincinnati Southern Railway. They, and the
7 persons or company operating said railway as lessees or other-
8 wise, shall make an annual report to the Secretary of the
9 Interior, to be in such form, verified in such manner, and con-
10 taining such items as he may prescribe.

1 SEC. 16. *And be it further enacted*, That if any person
2 shall willfully do, or cause to be done, any act or acts
3 whatever, whereby any building, structure, or other work, or
4 any engine, car, or machine, or other property to said
5 railway, shall be injured, impaired, or destroyed, or stopped,
6 the person or persons so offending shall be guilty of a
7 misdemeanor, and on conviction thereof, by any court of
8 competent jurisdiction, shall be punished by a fine of not
9 less than one thousand dollars nor more than five thousand
10 dollars, or by imprisonment not less than two years nor more
11 than five years, or both, at the discretion of the court, and
12 also forfeit any pay to the party aggrieved, double the amount
13 of damages sustained by means of such offense, to be

14 recovered by the party aggrieved, with costs of suit, by any
15 action of debt or case.

1 SEC. 17. *And be it further enacted,* That the following
2 words and expressions in this act shall have the several
3 meanings hereby assigned to them, unless there be
4 something in the context repugnant to such construc-
5 tion, that is to say: "The word "lands" shall include not
6 only lands and every estate therein, but also easements
7 and franchises connected therewith. The word "trustees"
8 shall mean the trustees for the time being appointed under
9 the said act of the general assembly of the State of Ohio,
10 and shall include the said board of trustees and their suc-
11 cessors. The expression "line of railway and its appendages"
12 shall extend to and include the works and conveniences of
13 the said railway, such as offices, stations, shops, sheds, depots,
14 car-houses, and other buildings, bridges, viaducts, tunnels,
15 arches, piers, abutments, embankments, approaches, ways,
16 aqueducts, culverts, sewers, drains, wharves, yards, fences,
17 telegraph posts and wires, tracks, turn-outs, and turn-tables,
18 and the rights of way and lands belonging to said trustees
19 whereon the said and other like works and conveniences used
20 in constructing, maintaining, or operating said railway are
21 placed. The expression "act of the general assembly of the
22 State of Ohio" shall mean the act of the general assembly of
23 the State of Ohio entitled "An act relating to cities of the

24 first class having a population exceeding one hundred and
25 fifty thousand inhabitants," passed on the fourth day of May,
26 in the year eighteen hundred and sixty-nine. The expression
27 "line of railway" shall mean the line of railway between the
28 city of Cincinnati, in the State of Ohio, and the city of Chat-
29 tanooga, in the State of Tennessee.

1 SEC. 18. *And be it further enacted,* That this act shall
2 be deemed and taken as a public act, and as such notice shall
3 be taken of it by all courts without the necessity of pleading
4 the same, and may be altered, amended, or modified by the
5 Congress of the United States, as the public good may re-
6 quire.